

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

COALVIEW CENTRALIA, LLC, a Delaware
limited liability company,

Plaintiff,

v.

TRANSALTA CENTRALIA MINING LLC, a
Washington limited liability company, and
TRANSALTA CORPORATION, a Canadian
corporation,

Defendants.

NO. 3:18-CV-05639-RBL

**STIPULATED MOTION FOR
ORDER TO SEAL**

I. INTRODUCTION

In accordance with LCR 5(g), and LCR 7(d)(1), and the Stipulated Protective Order (ECF No. 110), Plaintiff Coalview Centralia, LLC (“Plaintiff” or “Coalview”) and Defendants TransAlta Centralia Mining, LLC and TransAlta Corporation (“Defendants” or “TransAlta”) move to seal certain portions of:

- (1) Exhibits B and C to the previously filed Declaration of Garrett M. Wilson (ECF No. 165);
- (2) TransAlta Centralia Mining, LLC’s Motion for Partial Summary Judgment Regarding Termination;
- (3) Declaration of Lorraine Barrick in Support of TransAlta Centralia Mining, LLC’s Motion for Partial Summary Judgment Regarding Termination and Exhibit F and I thereto;
- (4) Declaration of Bob Nelson in Support of TransAlta Centralia Mining, LLC’s Motion for Partial Summary Judgment Regarding Termination and Exhibit A thereto; and
- (5) TransAlta Centralia Mining, LLC’s Opposition to Coalview Centralia, LLC’s Second Motion for Preliminary Injunction.

II. STATEMENT OF FACTS

A. The Stipulated Protective Order.

On April 5, 2019, this Court entered a Stipulated Protective Order. (ECF No. 110). Among other things, the Protective Order permits a party to designate documents produced in discovery as “Confidential.” (*See, e.g.,* ¶ 5.) The Stipulated Protective Order provides that, if a party wishes to submit to the Court information or materials that have been designated as “Confidential,” then such party shall meet and confer in an effort to determine if the “Confidential” designation may be removed and—if the designation(s) are not removed, then file a Motion to Seal. (*Id.* ¶ 4.3.)

1 **B. The Confidential Material.**

2 Defendants wish to file documents Bates stamped COALVIEW_000001–
3 COALVIEW_000028, a list of Coalview’s unpaid bills as of July 31, 2019, vendor balance
4 detail as of August 1, 2019, and 2019 financial statements. Defendants also wish to file
5 COALVIEW_000596–COALVIEW_000607, a deck regarding Coalview’s presentation of its
6 2018 budget to its bondholders. These documents are designated as “Confidential” by
7 Coalview pursuant to paragraph 2 of the Stipulated Protective Order.

8 On August 19, 2019, the Mine Safety and Health Administration (“MSHA”) provided
9 Coalview and TransAlta with a copy of a draft report documenting its findings with respect to
10 the sinking of Coalview’s dredge and the related fatality in December 2018. However, the
11 report has not yet been published and may be subject to revision. While Coalview opposes
12 Defendants’ filing or reliance on the draft MSHA report, in deference to the agency’s
13 investigation and reporting process, the parties agree that to the extent the report is filed or
14 considered by the Court, it should be kept confidential.

15 Coalview would also like to seal Exhibits B and C attached to its Declaration of Garrett
16 M. Wilson, which was filed on July 29, 2019. (ECF No. 165.) Coalview contends that these
17 exhibits contain financial information regarding Coalview’s operations, which is confidential
18 and not publicly available.

19 Counsel for the parties have conferred via email on August 26, 2019 and determined
20 that the parties are not willing to remove these assertions of confidentiality, that redaction is not
21 a workable alternative, and that the referenced documents should be filed under seal.

22 **III. ARGUMENT AND AUTHORITIES**

23 Fed. R. Civ. P. 26(c) authorizes a federal district court, upon showing of good cause, to
24 issue a protective order governing disclosures during the discovery process. Pursuant to Rule
25 26(c), the Court entered a Stipulated Protective Order on April 5, 2019. (ECF No. 110.)

26 In accordance with the Stipulated Protective Order and LCR 5(g)(3), Plaintiff and
27 Defendants submit this Motion to Seal. LCR 5(g)(3)(B) provides that, in the ordinary course, a

1 party filing a motion to seal must provide “a specific statement of the applicable legal standard
2 and the reasons for keeping a document under seal, with evidentiary support from declarations
3 where necessary.” But where “a party wish[es] to file a confidential document it obtained from
4 another party in discovery,” that party “may file a motion to seal but need not satisfy subpart
5 (3)(B)[.]” Instead, “the party who designated the document confidential must satisfy subpart
6 (3)(B) in its response to the motion to seal or in a stipulated motion.”

7 Plaintiff’s statement of the applicable legal standard and the reasons for keeping
8 COALVIEW_000001–COALVIEW_000028, COALVIEW_000596–COALVIEW_000607,
9 and Exhibits B and C to the Declaration of Mr. Wilson under seal are as follows:

10 These types of documents were specifically stipulated by the parties to be confidential
11 under paragraph 2 of the Stipulated Protective Order. D.E. 110; *see also J.R. Simplot Co. v.*
12 *Washington Potato Co.*, C16-1851RSM, 2016 WL 11066581, at *1 (W.D. Wash. Dec. 29,
13 2016) (compelling reasons existed to file under seal document that contained information about
14 debt ratios and contained consolidated balance sheet because public release of confidential
15 financial information put defendants at competitive disadvantage when negotiating future loan
16 terms, contracts with customers, and business opportunities). Coalview has a legitimate
17 interest in keeping its finances out of the public record, and injury could result absent the
18 documents being filed under seal. *Id.* As redaction is not a workable alternative, and
19 Defendants are unwilling not to file the referenced documents, a less restrictive alternative is
20 not sufficient.

21 As for the MSHA Report, while Coalview opposes Defendants’ filing or reliance on the
22 draft MSHA report, the parties agree that given that the report is not yet published and that it
23 ought to be left to MSHA to determine when the report should be made publicly available. The
24 Report arguably constitutes a deliberative, predecisional document under *NLRB v. Sears,*
25 *Roebuck & Co.*, 421 U.S. 132, 150 (1975). *See also Carter v. U.S. Dep’t of Commerce*, 307
26 F.3d 1084, 1089 (9th Cir.2002) (draft government documents “predecisional”).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IV. CONCLUSION

As required by the Stipulated Protective Order and LCR 5(g), Plaintiff and Defendants file this Stipulated Motion for Order to Seal and request the Court to file under seal the referenced documents.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

SAVITT BRUCE & WILLEY LLP

**KLUGER, KAPLAN, SILVERMAN,
KATZEN & LEVINE, P.L.**

By s/Miles A. Yanick

Miles A. Yanick, WSBA #26603
Duncan E. Manville, WSBA #30304
Sarah Gohmann Bigelow, WSBA #43634
1425 Fourth Avenue Suite 800
Seattle, Washington 98101-2272
Telephone: 206.749.0500
Facsimile: 206.749.0600
Email: myanick@sbwLLP.com
Email: dmanville@sbwLLP.com
Email: sgohmannbigelow@sbwLLP.com

By s/Steve I. Silverman

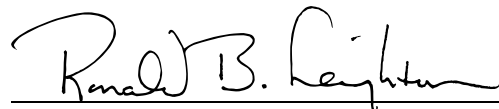
Steve I. Silverman, Fla. Bar No. 516831
Miami Center, 27th Floor
201 South Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 379-9000
Fax: (305) 379-3428
Email: ssilverman@klugerkaplan.com
*Attorneys for Plaintiff Coalview Centralia,
LLC (Admitted Pro Hac Vice)*

*Attorneys for Defendants TransAlta
Centralia Mining, LLC and TransAlta
Corporation*

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED this 27th day of Augustm 2019.



Ronald B. Leighton
United States District Judge